

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

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| Appellant:        | Nystrom et al.   | Examiner:       | Basit, A.   |
| Serial No.:       | 10/586,771   | Group Art Unit: | 3694        |
| Filing Date:      | May 10, 2007   | Docket No.:     | IHN.067.WUS |
| Confirmation No.: | 1601   | Customer No.:   | 10888       |
| Title:            | METHOD, DEVICE AND SYSTEM FOR AUTOMATED CONTEXT INFORMATION BASED SELECTIVE DATA PROVISION BY IDENTIFICATION MEANS |                 |             |

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this paper is being electronically transmitted by EFS-WEB to the United States Patent and Trademark Office on March 25, 2011.

By: /Erin Nichols Matkaiti/  
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**REPLY BRIEF**

Mail Stop Appeal Brief - Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted pursuant to 37 C.F.R. § 41.41 for the above-referenced patent application in response to the Examiner's Answer dated January 25, 2011.

This brief specifically addresses in section III (Argument) the comments provided in the "Response to Argument" section (10) of the Examiner's Answer. The remaining sections of this brief duplicate the substantive information provided in the Appeal Brief filed on October 27, 2010.

No fee is believed to be required for the filing of this Reply Brief; however, if it is determined that a fee is necessary, authority is given to charge/credit deposit account 50-3581 (IHN.067.WUS) in support of this filing.

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## **I. STATUS OF CLAIMS**

Claims 1-7, 9-11, 15-19, 22, 23, 28, and 29 are pending, and claims 8, 12-14, 20, 21, and 24-27 have been canceled.

At least claims 1-7, 9-11, 15-19, 22, and 23 have been finally rejected by the Examiner's action dated March 3, 2010 (hereinafter "final Office action"), from which Appellant appeals. While claims 28 and 29 are discussed at page twelve of the final Office action, these claims are not included in the statement of rejection on page three in violation of MPEP § 707.07(d).

A copy of claims 1-7, 9-11, 15-19, 22, 23, 28, and 29, which are the subject of this appeal, may be found in the Claims Appendix (section VIII) at pages 7-13.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The sole ground of rejection is as follows:

Claims 1-27 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over U.S. Publication No. 2004/0039661 by Fuzell-Casey *et al.* (hereinafter “Fuzell”).

### **III. ARGUMENT**

Appellant maintains each of the arguments presented in the Appeal Brief filed on October 27, 2010. In addition, the following arguments address the points raised in the Examiner’s Answer at pages ten through twelve.

#### **A. Fuzell does not teach or suggest any of the claimed features directed to radio frequency identification technology.**

The Examiner’s Answer confirms that the Examiner is equating Fuzell’s use of “radio waves of a wireless modem” “to communicate with an externally located device, such as an email server, an Internet Service Provider, or a base station” (Fuzell, paragraph [0028], cited at pages 10-11 of the Examiner’s Answer) with the claimed features directed to radio frequency identification technology, including radio frequency identification interrogation. A general use of radio waves to communicate with an email server, Internet Service Provider, or base station fails to correspond to the claimed radio frequency identification technology.

The claims recite features directed to radio frequency identification technology. For example, each of the independent claims recite “supplying said selected data record to a radio frequency identification communication module” and “providing said selected data record . . . by said radio frequency identification communication module . . . through radio frequency identification interrogation”.

While Fuzell’s general use of “radio waves” may broadly be interpreted as “radio frequency communication”, the claims do not recite “radio frequency communication”. They require a “radio frequency identification module” and “radio frequency identification interrogation”. During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification (emphasis added). *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004). The Examiner’s disregard of the term “identification” in the claim term “radio frequency identification” exemplifies the failure of the teachings of Fuzell to correspond to the claimed features.

As cited previously, the specification describes and defines radio frequency identification (RFID) technology (acronym definition at page 1, lines 13-14). For

example, RFID technology is concerned with short-range communication involving electromagnetic/electrostatic-coupling technology, which primarily includes radio frequency identification (RFID) transponders also denoted as radio frequency (RFID) tags and radio frequency transponder readers also denoted for simplicity as radio frequency (RFID) readers (page 1, lines 11-16). Examples of RFID communication modules that could provide a data record for being retrievable wirelessly by an external entity through radio frequency identification interrogation are further described:

Radio frequency identification (RFID) transponders are widely used for labeling objects, to establish person's identities and to recognize objects provided with radio frequency identification (RFID) transponders. Basically, radio frequency identification (RFID) transponders include an electronic circuit with data storage capacity and a radio frequency (RF) interface and high frequency (HF) interface, respectively, which couples an antenna to the electronic circuit. The radio frequency identification (RFID) transponders are typically accommodated in small containers. Depending on the requirements made on the deployment of the radio frequency identification (RFID) transponders (i.e. the data transmission rate, energy of the interrogation, transmission range etc.) different types are provided for data/information transmission on different radio frequencies within a range from several 10-100 kHz to some GHz (e.g. 134 kHz, 13,56 MHz, 860 - 928 MHz etc; only for illustration). Two main classes of radio frequency identification (RFID) transponders can be distinguished, i.e. passive radio frequency identification (RFID) transponders which are activated by radio frequency identification (RFID) transponder readers which generate an interrogation signal, for example a radio frequency (RF) signal at a certain frequency, and active radio frequency identification (RFID) transponders which comprise own power supplies such as batteries or accumulators for energizing. (page 1, line 25 – page 2, line 3).

Further, descriptions of RFID interrogation are provided, for example, at page 17, lines 9-17; page 24, lines 12-25; and page 29, line 29 – page 30, line 2. A general use of radio waves of a wireless modem would not reasonably be interpreted to correspond to the claimed radio frequency identification technology. Similarly, the reference to using carrier waves to locate a user in a zone fails to provide any correspondence to the claimed radio frequency identification module or interrogation. Without a presentation of

correspondence to each of the claimed features, the § 102(e) rejection cannot be maintained.

To anticipate a claim, the asserted reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit also recently held that “Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” (*Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 2008 WL 4614511 (Fed. Cir. 2008) quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Therefore, all claim elements and their limitations, must be found in the prior art reference to maintain the rejection based on 35 U.S.C. § 102. Appellant respectfully maintains that Fuzell does not teach every element of independent claims 1, 11, and 15 in the requisite detail and therefore fails to anticipate claims 1-7, 9-11, 15-19, 22, 23, 28, and 29. Appellant accordingly requests that the rejection be reversed.

**B. The asserted marketing information of Fuzell fails to correspond to the claimed selected data record.**

At page eleven of the Examiner’s Answer, the Examiner contends that Fuzell’s marketing information would correspond to the claimed selected data record. Using independent claim 1 as an example, the claimed selected data record is provided “as an identification information” for being retrievable “through radio frequency identification interrogation”. The general mention of marketing information has not been shown to correspond to the claimed provision of identification information. As explained at page 1, line 22, of the specification RFID technology is a type of identification information technology. Further, as discussed above, Fuzell makes no mention or suggestion that the marketing information would be retrievable through radio frequency identification interrogation. Without a presentation to each of the claimed features, the § 102(e) rejection cannot be maintained and must be reversed.

### **C. Conclusion**

In view of the above, Appellant respectfully submits that the invention set forth in claims 1-7, 9-11, 15-19, 22, 23, 28, and 29 is patentable over the asserted reference and that the rejection should be reversed. Appellant respectfully requests reversal of the rejection as applied to the appealed claims and allowance of the application with respect to the appealed claims.

Authorization to charge the undersigned's deposit account is provided on the cover page of this brief.

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#### **IV. CLAIMS APPENDIX**

1. A method, comprising:
  - receiving, at an apparatus, context information from an external source;
  - selecting, at said apparatus, a data record out of a plurality of data records, wherein said plurality of data records are maintained within said apparatus, wherein said selecting of said data record is performed in accordance with said received context information;
  - supplying said selected data record to a radio frequency identification communication module within said apparatus; and
  - providing said selected data record as an identification information by said radio frequency identification communication module for being retrievable wirelessly by an external entity through radio frequency identification interrogation.
2. The method according to claim 1, comprising scanning an environment of said apparatus to determine a presence of said external source.
3. The method according to claim 1, further comprising analyzing, at said apparatus, said received context information for selecting said data record.
4. The method according to claim 3, wherein said analyzing comprises at least one operation out of:
  - extracting, at said apparatus, from said received context information one or more commands instructing to select said data record;

extracting, at said apparatus, an information item from said context information to be compared with data items comprised by said data records in order to allow for selecting said data record; and

extracting, at said apparatus, an information item from said context information to be compared with association information in order to allow for selecting said data record.

5. The method according to claim 1, wherein each of said data records relates to at least one out of a group including payment related information, loyalty card related information, credit card related information, a debit card related information, a prepaid card related information, a coupon related information, a voucher related information, and electronic ticket related information.

6. The method according to claim 1, wherein said supplying of said selected data record to said radio frequency identification communication module further comprises:

configuring, at said apparatus, said radio frequency identification communication module with said selected data record for providing said selected data record by said radio frequency identification communication module provided as said identification information.

7. The method according to claim 1, wherein said providing of said selected data record by said radio frequency identification communication module allows for wirelessly retrieving by a corresponding external counterpart radio frequency identification communication module of said external entity.

9. The method according to claim 1, further comprising:  
revoking, at said apparatus, said provision of said selected data record in  
consequence of at least one operation out of a set of operations including:  
running down, at said apparatus, a predefined interval in time;  
exceeding, at said apparatus, a predefined moment in time; and  
detecting, at said apparatus, whether said external entity has retrieved said selected  
data record provided as identification information from said radio frequency identification  
communication module.
10. The method according to claim 1, wherein said radio frequency identification  
communication module is operable with a reader mode and a transponder mode, said  
method further comprising:  
operating said radio frequency identification communication module in said reader  
mode for said acquisition of said context information; and  
operating said radio frequency identification communication module in said  
transponder mode for provision of said selected data record.
11. A computer-readable storage medium having computer-executable program code  
sections stored thereon for carrying out a method when said program code sections are run  
on an apparatus including at least one of a computer, a microprocessor based device, a  
terminal, a network device, a mobile terminal or a mobile communication enabled  
terminal, said method comprising:  
receiving context information from an external source;

selecting a data record out of a plurality of data records, wherein said plurality of data records are maintained within said apparatus, wherein said selecting of said data record is performed in accordance with said received context information;

supplying said selected data record to a radio frequency identification communication module within said apparatus; and

providing said selected data record as an identification information by said radio frequency identification communication module for being retrievable wirelessly by an external entity through radio frequency identification interrogation.

15. An apparatus, comprising:

radio frequency interface configured for receiving context information from an external source;

selection means configured for selecting a data record out of a plurality of data records, wherein said plurality of data records is maintained by the apparatus for selection, wherein said selecting of said data record is operable in accordance with said context information; and

configuration means configured for supplying said selected data record to a radio frequency identification communication module within said apparatus;

wherein said radio frequency identification communication module is configured for providing said selected data record as an identification information for being wirelessly retrievable by an external entity through radio frequency identification interrogation.

16. The apparatus according to claim 15, wherein said radio frequency interface is further configured for scanning an environment of said apparatus in order to determine a presence of said external source.

17. The apparatus according to claim 15, wherein said radio frequency identification communication module is coupled electrically or wirelessly to said apparatus at least for a time.

18. The apparatus according to claim 15, further comprising:

analysis means configured for analyzing said received context information, wherein said apparatus further comprises at least one means out of:

extraction means configured for extracting from said received context information one or more commands and/or for extracting an information item from said context information, wherein said one or more commands instruct to select said data record; and

comparison means configured for comparing said information item with data items comprised by said data records and/or for comparing said information item with association information such that the selection is operable with comparison results.

19. The apparatus according to claim 15, further comprising:
- revocation means configured for revoking said provision of said selected data record by said radio frequency identification communication module in consequence of a signal generated by at least one means out of:
- timer means configured to generate said signal in case a predefined interval in time has run down and/or in case a predefined moment in time has been exceeded; and
- detection means configured to detect whether said external entity has retrieved said selected data record provided as said identification information from said radio frequency identification communication module.
22. The apparatus according to claim 15, wherein said radio frequency identification communication module is operable with a reader mode and a transponder mode; wherein said radio frequency identification communication module is operable with said reader mode for acquiring context information, wherein said radio frequency identification communication module is operable with said transponder mode for providing said selected data record as said identification information.
23. The apparatus according to claim 15, wherein at least one of said means is implemented on the basis of a code section, which is configured to perform a function of said means, when carried out by a processing means comprised by said apparatus.

28. The method according to claim 1, wherein said context information includes at least one of location information, an interval in time, a current time, an instruction identifying a specific data record of said plurality of data records, and an identification of said external source.

29. The apparatus according to claim 15, wherein said context information includes at least one of location information, an interval in time, a current time, an instruction identifying a specific data record of said plurality of data records, and an identification of said external source.